

Freedom of Information Act 2000 (Section 51)

Information notice

Date: **1 February 2021**

Public Authority: **Department of Health and Social Care**

Address: **39 Victoria Street
London
SW1H 0EU**

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish her with any information she requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

 (a) has received an application under section 50, ...

she may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference IC-42256-N8H1, for a decision whether a request for information made by the complainant to the Department of Health and Social Care (DHSC) on 8 October 2019, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. On 8 October 2019 the complainant made the following request for information under the FOIA -

"Thank you for your email dated 4 October 2019. I note that you state that you hold information relevant to the request. I am prepared to refine the request. I note that you suggest for example refining question 10. Please find below the refined questions. If this still takes the request over the threshold, please advise further refinements.

Questions

1. Please provide a copy of the contract / relevant documentation recording the agreement between the Department of Health and Social Care and Amazon, pertaining to the use of the NHS website as content source for Amazon Echo (Alexa) devices.
2. Please provide documents relevant to any tendering or procurement process for collaboration with a home assistant. Alternatively, if no procurement or tendering process took place, please confirm this.
3. Please provide a copy of the following impact assessments, if carried out in relation to the collaboration between Amazon and the NHS in relation to Amazon Echo(Alexa) devices. This should include: data protection impact assessment, equality and human rights impact assessment, privacy impact assessment. If any of these have not been carried out, please confirm this.
4. If the issue of sharing data with third parties is not covered in any contract or relevant documentation disclosed in response to question 1, please provide a copy of relevant documentation that confirms sharing arrangements (including confirmation that data not be shared with third parties).
5. Please provide a copy of communications between Amazon.com <<http://amazon.com/>> Inc (or subsidiary companies) and the Department of Health and Social Care pertaining to the use of the NHS website as a content source for Amazon Echo (Alexa) devices for the period of 1st July 2018 - 31st August 2019.

Please note that if question 5 takes the request over the cost limit, it can be responded to as a separate and consecutive request whose deadline should start after the response to the initial request containing questions 1-4. If this is not possible, then question 5 can be excluded..."

3. The DHSC responded on 5 November 2019 as follows –

Question 1 – The DHSC provided a link to a redacted version of the agreement. The redacted parts were withheld under section 43(2) – commercial interests and section 40(2).

Question 2 – The information was provided.

Question 3 – The information was not held.

Question 4 – The response was covered by the agreement.

Question 5 – It was explained that this part of the request would exceed the fees limit and the DHSC stated that it would be considered at a later point as a new request, as suggested by the complainant.

4. The complainant requested an internal review on 20 December 2019 and asked the DHSC to look again at the citing of section 43(2). The complainant asked for several clarifications and also limited question five to a timeframe of four months.

5. The DHSC provided an internal review on 31 January 2020 in which it maintained its original position and confirmed that it had applied section 12 to the original question five and acknowledged that the question had been resubmitted as a new request.

6. The complainant wrote to the Commissioner on 19 March 2020 to complain about the DHSC's citing of section 43(2) in relation to question one of the request.

7. On 2 April 2020 the Commissioner wrote to the complainant to explain that her complaint was likely to be significantly delayed as she had amended her casework procedures due to the pandemic and the pressures being placed on public authorities.

8. On 14 December 2020 the Commissioner wrote an investigation letter to the DHSC where she set out the scope of the case, requiring the DHSC to respond to her questions concerning the application of section 43(2)(commercial interests) and asking to see the withheld information.

9. The DHSC responded on the same day to explain that it did not have the capacity to deal with the case at that time. It explained that staff members were facing a large increase in its FOI caseload and that policy colleagues were deployed on the government's COVID-19 response. Additionally, the DHSC was prioritising other open and overdue ICO cases. The DHSC stated that the case had been thoroughly investigated at the internal review stage, that a full explanation had been given to the complainant, and that it maintained the citing of

section 43(2). The DHSC said that it hope to be able to initiate an investigation from its side in the New Year, 2021.

10. Having had no further communication from the DHSC, the Commissioner sent an email on 27 January 2021 asking for some indication of whether the DHSC would be able to respond shortly.
11. On the same day the DHSC responded, reiterating that it did not have the capacity to respond to the Commissioner regarding this case.

Information required

12. In view of the matters described above the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the Act she requires that the DHSC shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information.
 - A copy of the withheld information from the agreement, as requested in question one between the DHSC and Amazon, pertaining to the use of the NHS website as content source for Amazon Echo (Alexa) devices. The DHSC should provide an unredacted version of the agreement to the Commissioner with the redacted parts highlighted or provide the withheld parts of the agreement separately.
 - The DHSC's responses to the Commissioner's questions in her letter, dated 14 December 2020, regarding its citing of section 43(2).

Failure to comply

13. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of appeal

14. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@Justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

15. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

Pamela Clements
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